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UNITED STATES OF AMERICA POSTAL REGULATORY COMMISSION WASHINGTON, DC 20268-0001

Before Commissioners: Robert G. Taub, Acting Chairman;

Nanci E. Langley, Vice Chairman;

Mark Acton; and Tony Hammond

Competitive Product Prices International Merchandise Return Service Agreements with Foreign Postal Operators Non-Published Rates Docket No. MC2016-94

Competitive Product Prices International Merchandise Return Service Agreements with Foreign Postal Operators Non-Published Rates 2 (MC2016-94) Docket No. CP2016-119

ORDER ADDING COMPETITIVE INTERNATIONAL MERCHANDISE RETURN SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS 2 (IMRS-FPO 2) PRODUCT TO THE COMPETITIVE PRODUCT LIST

(Issued March 17, 2016)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2 (IMRS-FPO 2) to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2 (IMRS-FPO 2) Product to the Competitive Products List and Notice of Filing IMRS-FPO 2 Model Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, March 8, 2016 (Request).

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II. BACKGROUND

On March 8, 2016, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request and supporting documents. The Postal Service asserts that IMRS-FPO 2 is a competitive product that establishes rates "not of general applicability" under 39 U.S.C. § 3632(b)(3) and 39 C.F.R. § 3015.5. Request at 1-2.

The Postal Service's supporting documents included a redacted copy of the Governors' Decision authorizing Outbound International Competitive Agreements, a redacted IMRS-FPO 2 Model Agreement, the requested changes to the competitive product list, a statement supporting the Request, a certification of compliance with 39 U.S.C. § 3633(a), a redacted Management Analysis describing the pricing methodology, and financial workpapers. The Postal Service also submitted an application for non-public treatment of materials requesting that unredacted versions of the Governors' Decision, the Management Analysis, the Model Agreement, and related financial information remain under seal. *Id.* Attachment 1.

On March 9, 2016, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.² To clarify the Postal Service's Request, Chairman's Information Request No. 1 was issued and directed the Postal Service to respond by March 16, 2016.³ On March 14, 2016, the Postal Service filed an errata in response.⁴ The Errata corrects minor typographical errors and conforms the Model Agreement to

² Notice and Order Concerning the Addition of Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2 (IMRS-FPO 2) Product to the Competitive Product List, March 9, 2016 (Order No. 3143).

³ Chairman's Information Request No. 1, March 11, 2016.

⁴ Notice of the United States Postal Service of Filing Errata Concerning Request to Add Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2 (IMRS-FPO 2) Product to the Competitive Products List, March 14, 2016 (Errata).

correspond to the conditions imposed by the Commission in Order No. 2639.⁵ The Errata revises Article 9, Article 23, and Annex 1 to ensure that if the rates under any IMRS-FPO 2 agreement no longer fall within the most recent rate ranges approved by the Commission, that agreement will terminate within 60 days. Errata, Attachment 1 at 3, 6, Annex 1 at 3.

III. COMMENTS

The Public Representative filed comments on March 15, 2016.⁶ No other interested person filed comments. Based on his review of the Postal Service's Request and supporting documentation, the Public Representative concludes that the Request is consistent with 39 U.S.C. § 3642(b) and 39 CFR 3020.30 *et seq.*, and recommends that IMRS-FPO 2 product be added to the competitive product list. See PR Comments at 4. He finds that the IMRS-FPO 2 product should generate sufficient revenue to cover costs and therefore will not adversely affect the Postal Service's ability to contribute appropriately to institutional costs. *Id.* He further concludes that market dominant products will not subsidize the competitive IMRS-FPO 2 product. *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Model Agreement, the supporting data filed under seal, the Errata, and the Public Representative's comments.

Docket Nos. MC2015-68 and CP2015-99, Order Conditionally Approving Addition of Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (IMRS-FPO) to the Competitive Product List, August 4, 2015, at 7-8 (Order No. 2639).

⁶ Public Representative Comments on Postal Service Request to Add Competitive International Merchandise Return Service Agreements with Foreign Postal Operators Product 2 to the Competitive Products List, March 15, 2016 (PR Comments).

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A. Product List Requirements

The Commission's statutory responsibilities when evaluating the Request include assigning the IMRS-FPO 2 product to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. Before adding a product to the competitive product list, the Commission must determine that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service asserts that it would provide international return shipping services as described in the Model Agreement, in a highly competitive market. Request, Attachment 3 at 2, 4. Referencing this assertion, the Postal Service anticipates that "the addition of the IMRS-FPO 2 product will have little, if any, impact upon small business concerns" and "will provide small businesses with an additional option for their international shipping needs." *Id.* Attachment 3 at 4. The Postal Service also states that no current customer uses the IMRS-FPO 2 product; instead, it would be a new offering for United States-based consumers to return merchandise to a merchant in a foreign country. *Id.* According to the Postal Service, the IMRS-FPO 2 product would fill a gap in currently available product offerings by providing a solution for international merchandise returns. *Id.*

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. The availability of other private sector providers supports this conclusion. The Public

Representative supports the addition of the IMRS-FPO 2 product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements, the comments filed, and the Postal Service's supporting justification, the Commission finds that IMRS-FPO 2 is appropriately classified as competitive and is added to the competitive product list.

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B. Cost Coverage Considerations

Because the Commission finds IMRS-FPO 2 is a competitive product, the Postal Service must also show that the product covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the IMRS-FPO 2 product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the IMRS-FPO 2 product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

Based on a review of the record, the Commission finds that during the first year, the IMRS-FPO 2 product should comply with 39 U.S.C. § 3633(a)(2). However, the Postal Service provides no definite evidence that the IMRS-FPO 2 product will comply with section 3633(a) during the subsequent contract years. Although each IMRS-FPO 2 agreement will have indefinite duration, if the rates under any IMRS-FPO 2 agreement no longer fall within the most recent rate ranges approved by the Commission, that agreement will terminate within 60 days. See Errata, Attachment 1 at 3, 6, Annex 1 at 3. The Postal Service confirms that it will file any amendments or modifications to the IMRS-FPO 2 agreements with the Commission as the amendments or modifications occur. Request at 6. Whenever an IMRS-FPO 2 agreement's rates are adjusted,

whether to avoid automatic termination under Article 9 or at the request of either party to the agreement, the Postal Service must file a copy of a notice of the adjusted rates along with the financial model inputs used to generate the new rates with the Commission. See id. This process will ensure that any rate adjustments should not affect the likelihood that the rates will cover attributable costs during the lifetime of the agreement. Further, the Commission will review the IMRS-FPO 2 product's cost coverage and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Commission's Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

For these reasons, the Commission also finds that the IMRS-FPO 2 product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds the IMRS-FPO 2 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See also 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the IMRS-FPO 2 product indicates it is consistent with section 3633(a).

C. Other Considerations

The Postal Service must file a copy of each IMRS-FPO 2 agreement along with the financial model inputs used to generate rates for each agreement with the Commission. Each agreement and the related financial workpapers must be filed in Docket No. CP2016-119 within a reasonable time (*e.g.*, within 10 days of the effective date of the agreement). To facilitate these filings, the title of the notice accompanying each IMRS-FPO 2 agreement must include a serial number unique to each contract, and indicate the effective date (and termination date, if applicable) of each agreement.⁷

⁷ If multiple IMRS-FPO 2 agreements are filed simultaneously, the title of the notice must indicate the range of serial numbers being filed. The body of the notice must identify each serial number and the effective date of each agreement.

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The Postal Service must promptly notify the Commission when an IMRS-FPO 2 agreement terminates. Within 30 days of the termination of an agreement, the Postal Service must file the annual (agreement year) costs, volumes, and revenues associated with that agreement.

In conclusion, the Commission approves IMRS-FPO 2 as a new competitive product. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

- Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2 (MC2016-94 and CP2016-119) shall be added to the competitive product list as a new product under Outbound International. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.
- 2. The Postal Service must file a copy of each IMRS-FPO 2 agreement along with the financial model inputs used to generate rates for each agreement with the Commission. Each agreement and the related financial workpapers must be filed in Docket No. CP2016-119 within a reasonable time (e.g., within 10 days of the effective date of the agreement). The title of the notice accompanying each IMRS-FPO 2 agreement must include a serial number unique to each contract, and indicate the effective date (and termination date, if applicable) of each agreement. The agreements and related financial workpapers must be filed in Docket No. CP2016-119.

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- 3. Whenever an IMRS-FPO 2 agreement's rates are adjusted, whether to avoid automatic termination under Article 9 or at the request of either party to the agreement, the Postal Service must file a copy of a notice of the adjusted rates along with the financial model inputs used to generate the new rates with the Commission.
- 4. Whenever an IMRS-FPO 2 agreement terminates, the Postal Service must promptly notify the Commission. Within 30 days of the termination of an agreement, the Postal Service must file the annual (agreement year) costs, volumes, and revenues associated with that agreement.
- 5. The Secretary shall arrange for the publication in the *Federal Register* of an updated product list reflecting the change made in the body of this Order.

By the Commission.

Stacy L. Ruble Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products 2000 Competitive Product List

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2001 Competitive Product Descriptions

2510

Outbound International

2510.12

Competitive International Merchandise Return Service Agreements with Foreign Postal Operators

2510.12.2 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

 Competitive International Merchandise Return Service Agreements with Foreign Postal Operators <u>1</u>

 Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2

Baseline Reference

<u>Docket Nos. MC2016-94 and CP2016-119</u> <u>PRC Order No. 3160, March 17, 2016</u>

Included Agreements
